

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, and 476.2, the Utilities Board (Board) gives notice that on September 18, 2009, the Board issued an order in Docket No. RMU 2009-0009, In re: High-Volume Access Service [199 IAC 22], "Order Commencing Rule Making," that proposes amendments to the Board's rules regarding switched access service provided by local exchange carriers. The Board is proposing amendments to these rules based upon the facts established in re: Qwest Communications Corp. v. Superior Telephone Cooperative, et al., Docket No. FCU-07-2. The order commencing this rule making and containing the background and support for this proceeding can be found on the Board's Web site, www.state.ia.us/iub.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before October 27, 2009. The statement should be filed electronically through the Board's Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation to receive oral comments on the proposed amendments will be held at 9 a.m. on December 8, 2009, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.4, 476.5, 476.11, and 476.95.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of "High-volume access service (HVAS)" in subrule **22.1(3)**:

"High-volume access service (HVAS)" is any service that results in an increase in total billings for intrastate exchange access for a local exchange utility in excess of 100 percent in less than six months. By way of illustration and not limitation, HVAS typically results in significant increases in interexchange call volumes and can include chat lines, conference bridges, call center operations, help desk provisioning, or similar operations. These services may be advertised to consumers as being free or for the cost of a long-distance call. The call service operators often provide marketing activities for HVAS in exchange for direct payments, revenue sharing, concessions, or commissions from local service providers.

ITEM 2. Adopt the following **new** subparagraph **22.14(2)"d"(8)**:

(8) A provision prohibiting the application of association access service rates to HVAS traffic.

ITEM 3. Adopt the following **new** paragraph **22.14(2)"e"**:

e. A local exchange utility that is adding a new HVAS customer or otherwise reasonably anticipates an HVAS situation shall notify interexchange utilities of the situation, the telephone numbers

that will be assigned to the HVAS customer (if applicable), and the expected date service to the HVAS customer will be initiated, if applicable. Notice should be sent to each interexchange utility that paid for intrastate access services from the local exchange carrier in the preceding 12 months, by a method calculated to provide adequate notice. Any interexchange utility may request negotiations concerning the access rates applicable to calls to or from the HVAS customer.

A local exchange utility that experiences an increase in intrastate access billings that qualifies as an HVAS situation, but did not add a new HVAS customer or otherwise anticipate the situation, shall notify interexchange utilities of the HVAS situation at the earliest reasonable opportunity, as described in the preceding paragraph. Any interexchange utility may request negotiations concerning whether the local exchange utility's access rates, as a whole or for HVAS only, should be changed to reflect the increased access traffic.

When a utility requests negotiations concerning intrastate access services, the parties shall negotiate in good faith to achieve reasonable terms and procedures for the exchange of traffic. No access charges shall apply to the HVAS traffic until an access tariff for HVAS is accepted for filing by the board and has become effective. At any time that any party believes negotiations will not be successful, any party may file a written complaint with the board pursuant to Iowa Code section 476.11. In any such proceeding, the board will consider setting the rate for access services for HVAS traffic based upon the incremental cost of providing HVAS, although any other relevant evidence may also be considered. The incremental cost will not include marketing or other payments made to HVAS customers. The resulting rates for access services may include a range of rates based upon the volume of access traffic or other relevant factors.

ITEM 4. Amend subrule 22.20(5), introductory paragraph, as follows:

22.20(5) *Certificate revocation.* Any five subscribers or potential subscribers, an interexchange utility, or consumer advocate upon filing a sworn statement showing a generalized pattern of inadequate telephone service or facilities may petition the board to begin formal certificate revocation proceedings against a local exchange utility. For the purposes of this rule, inadequate telephone service or facilities may include the failure to treat HVAS charges in a manner consistent with the requirements of 199—paragraph 22.14(2)“e.” While similar in nature to a complaint filed under rule 199—6.2(476), a petition under this rule shall be addressed by the board under the following procedure and not the procedure found in 199—Chapter 6.